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Floor Debate
March 20, 2007

[LB83 LB106 LB124 LB145 LB160 LB231 LB237 LB239 LB248 LB292 LB328 LB347
LB390 LB458 LB476 LB578 LB646 LB681]

PRESIDENT SHEEHY: Good morning. Welcome to the George W. Norris Legislative Chamber, for the forty-ninth day of the One Hundredth Legislature, First Session. Our chaplain for today is Reverend Jim Helgren, from the First Evangelical Lutheran Church in Wilber, Nebraska, Senator Karpisek's district. Would you all please rise. []

PASTOR HELGREN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Reverend Helgren. I call to order the forty-ninth day of the One Hundredth Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review reports they have examined and reviewed LB328 and recommends that same be placed on Select File. LB160, LB578, LB681, LB106, and LB292A, all on Select File, some of those having Enrollment and Review amendments attached. Your Committee on Government, Military and Veterans Affairs, chaired by Senator Aguilar, reports LB646 to the Legislature, advanced to General File with committee amendments attached, that report signed by Senator Aguilar. Confirmation report from the Government Committee, and a communication from the Governor to the Clerk. (Read re: Engrossed LB83, LB124, LB145, LB231, LB237, LB239, LB248, LB347, and LB390.) That's all that I have, Mr. President. (Legislative Journal pages 899-905.) [LB83 LB106 LB124 LB145 LB160 LB231 LB237 LB239 LB248 LB292 LB328 LB347 LB390 LB578 LB646 LB681]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to first item under General File, senator priority bill. [LB476]

CLERK: Mr. President, LB476, a bill originally introduced by Senator Chambers. (Read title.) The bill was discussed yesterday by the Legislature, Mr. President. I do have amendments pending. [LB476]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Chambers, would you like to give us a short summary of LB476? [LB476]

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SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, the thumbnail sketch that the Clerk read is about all that really needs to be said to bring us up to where we are. No amendments were adopted yesterday. The Speaker withdrew his motion to bracket the bill, so now what we're looking at is a bill which would abolish the death penalty. It would then replace it with a life sentence without possibility of parole and require the individual who is convicted and sentenced to that term, to provide restitution to the family, to the estate of the person who had been the victim. And that's about all, I think, Mr. President, that I need to say to bring us up to speed. Thank you. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Chambers. We'll move to the amendments. Mr. Clerk. [LB476]

CLERK: Mr. President, Senator Flood would move to amend with AM307. (Legislative Journal page 554.) [LB476]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on AM307. [LB476]

SPEAKER FLOOD: Thank you, Mr. President and members. I think it's important for me to give a few introductory comments before we start talking about what this amendment does. This amendment, in my opinion--although I am opposed to the underlying LB476--goes a long way, I think, for county attorneys and prosecutors and the justice system, in reducing the excess due process that exists in our current capital murder statute, if we're going to change that to life in prison without the possibility of parole. I want to be very clear--I want this amendment adopted, but it does not mean I'm going to vote for the bill. I assure you, I will not vote for LB476. But I guess I'm doing this because if the policy of the Legislature in Nebraska will be that we do not have the death penalty, I do not see any reason for the extra, super due process that we've built into our statutes since the mid-seventies, following the decisions in Furman, Gregg, Ring v. Arizona, LB1 in 2002, the moratorium discussion and changes in 1999--I don't see any reason to have that extra language in the statute. So I realize that this amendment does take us off, a little bit, the true discussion of whether the death penalty is the right sanction in Nebraska, whether we want the death penalty. I believe we should have the death penalty. This amendment simply goes into Senator Chambers' bill and strikes certain provisions, so that if that is the case and you really are voting for LB476 to reduce the cost to the state, then we should not have all of the extra, super due process that has been built into our statute. Specifically, what am I talking about? Well,...and I will spend some time later today discussing some of the implications of the super due process that's been built in over time, but basically this amendment strikes those provisions that I talked to you about that were added after Furman and Ring. And I can go on a section-by-section summary, to give you an idea of what this does. In Section 1, it strikes Section 29-2520 in its entirety, and those are the procedures for

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aggravation hearings, to find aggravators. So in my opinion, we don't need aggravators if we're simply going to--and I don't want to diminish the substance of such a sentence--but if we're going to sentence the offender to life in prison without the possibility of parole, I don't see any reason under the case law that we need to find aggravators and have mitigator hearings. Similarly, it strikes the section where the three-judge panel has a process for receiving evidence of mitigators and sentence excessiveness or disproportionality. I don't know that there has to be a proportionality analysis under a system where we have life in prison without the possibility of parole. I'd also strike Section 29-2522, which is the three-judge panel weighing aggravators versus mitigators, the statutory aggravator/mitigators in 2523. This amendment in Section 2, with regard to Section 28-303, the first-degree murder statute, strikes the language in LB476 requiring the three-judge panel process with weighing of aggravators, mitigators, and it goes forward. What else does this do? Well, this bill in Section 6 and 7 strikes additional language regarding the three-judge panel; Section 8 is a continuation of the same; Section 9 adds 29-1602 to the repealer section; and Section 10 adds 29-2261 to the repealer section. So basically, we're taking out a lot of the language in LB476 that has been built in over time, contemplating a first-degree murder sentence including the death penalty. Where have we come? I guess it's important to talk about where...and I can use this amendment, also, as an opportunity to talk about all of the due process provisions that have been built into the death penalty, first-degree murder statutes over time. What did Nebraska do after that Gregg v. Georgia case? Well, as you might remember from yesterday, in the mid-seventies we already had a bifurcated sentencing process, where essentially, if you were convicted by a jury, the jury would decide whether you received a jail term or the death penalty. If you were convicted during a bench trial or after a plea to the court of guilty, you were sentenced by the judge. Obviously, after Gregg we found that finding of aggravators/mitigators was appropriate, as well as an automatic appeal, and the requirement at the sentence of death be supported by written findings of fact. Now I think that's important to note. If somebody in Nebraska is convicted of the death penalty, their sentence is automatically appealed to the Nebraska Supreme Court, and it is reviewed thoroughly. And I think that those are the types of super due process provisions that don't need to exist any more, if the policy of the Legislature is to switch to a system of life imprisonment without the possibility of parole. After Gregg the Legislature added the proportionality excessiveness review by the Supreme Court on appeal. After Ring v. Arizona, which is a 2002 U.S. Supreme Court decision, the Arizona capital sentencing scheme--let me just talk to you about it. These are the facts that gave rise to the decision in Ring v. Arizona. After a jury found the defendant guilty of first-degree murder, the trial judge would weigh the aggravators and mitigators and decide whether the death penalty was appropriate. The Ring case essentially said that a defendant can be sentenced to death only after certain facts, aggravators, are found by a court. Such facts can simply...cannot simply be characterized as sentencing enhancements, as they function as elements of a capital offense. I guess what I'm pointing to here is that after Ring, Nebraska had a problem similar to Arizona, where a judge or a three-judge panel was charged with finding

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aggravators, not the jury. So after Ring, the Legislature said, well, it's the jury's job to determine whether the aggravators exist, and so we made a number of changes in LB1; again, super due process provisions that were built into our statutes in 2002. LB1, Section 4, required that witnesses in capital cases be endorsed by 30 days before trial; Section 5 required the information filed by the prosecutor to include notice of aggravators, and that information of the pleading could be amended, but not later than 30 days before trial. Section 10, the findings section clarifies that these post-Ring cases were procedural in nature only, and not to be considered substantive, to run into trouble with ex post facto concerns. Section 11 and 12 of LB1 in 2002 changed the process relating to the aggravator hearing and hearing relating to mitigator sentence excessiveness or disproportionality. The new procedures adopted in LB1 were much more detailed. The Nebraska rules of evidence, according to the law, would apply at an aggravator hearing. A jury's verdict on the existence of aggravators must be unanimous; three-judge panel that would be convened to hear evidence regarding mitigators and sentence excessiveness or disproportionality will also hear evidence regarding aggravators if the jury did not. Any probative evidence admissible regarding mitigators and sentence excessiveness would be done so without the rules of evidence...under the Nebraska rules of evidence. I guess what I am saying here is we have, over time, built into our system a number of protections, to make sure that we comply not only with federal law, with state law, but more importantly, that we make sure that someone sentenced to death in Nebraska has the appropriate super due process to ensure that Nebraska does not go down this road lightly. And my question to you is, if we're going to repeal the death penalty in Nebraska, doesn't it make sense, in advance of whether or not that is done on LB476, that we adopt AM307, so that we can build in the cost-effectiveness that some of you have relied upon? Personally, I don't base my decision on the death penalty on the cost involved. I think certain crimes warrant, and certain behaviors warrant the death penalty. But that's where this amendment takes us. And in my next opportunity to speak, I'm going to talk to you about some of the effects that LB1 had on... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SPEAKER FLOOD: ...cases in Madison County. You'll find that certain admissions were made inside that 30-day window. I want to talk about mental retardation and the clarity necessary in some of that language. I also want to talk about how thorough this set of statutes are, these statutes are, with regard to securing the death penalty against an offender. So I guess I am looking forward to taking AM307 to a vote. I think it's a reasonable question to ask in advance of the discussion on the underlying bill itself, and I look forward to a continuing discussion. I also want to compliment the Legislature on its attention and acknowledgement of the gravity of this situation, as I think we've had a very good debate to this point, and I don't want to see that disturbed. Thank you, Mr. President. [LB476]

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PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the opening to AM307 to LB476. The floor is now open for discussion. We'll have Senator Ashford, followed by Senator Flood, Senator Erdman, and Senator Synowiecki, and others. Senator Ashford. [LB476]

SENATOR ASHFORD: Thank you, Mr. President and members. First of all, let me acknowledge Senator Flood's comments about the debate. Obviously, it was fabulous. I mean, we were here yesterday and we debated a great issue. We didn't have to be called out to the lobby, and that's why we are a great body, and I appreciate the comment Senator Flood made. I'm going to accept this amendment. I think it's an appropriate amendment. My argument and the reason that I have...and by the way, I'm speaking only for myself, not for the other members of the Judiciary Committee, because this amendment was not offered at that time, but I appreciate the spirit in which it was offered. I'm sorry Speaker Flood can't vote for the bill with the amendment attached, because I think it is a good amendment, and we should have the opportunity to discuss it. And the amendment may need some work between General File and Select File, but I think it gets right to the point. In 1988 when this matter came before the Legislature when I was here, I didn't vote to repeal the death penalty, because I felt I was...certainly felt strongly that there were a few cases where the death penalty needed to be carried out. Since that time it has not happened, and I'm going to be handing out to you information about the many, many, many cases that have occurred in that time span, where the crimes were just awful, awful crimes, where the death penalty was not the punishment. And I would ask you to take a look at those, because if anybody can compare those in any rational way with the cases that are on death row, I'll eat my chair. So that's number one. Number two, I certainly don't feel any safer with the death penalty, the way it's being applied in Nebraska, than I did 10 or 12 years ago, when it was...the representation made by many was that we're going to reduce crime, and the death penalty is the panacea. And thirdly, quite frankly, being tough on crime does not necessarily mean being for the death penalty. I am now becoming convinced of that, and one can be tough on crime if one has a criminal justice system that works, that's efficient, and that punishes people for the crime. And I think that's what Senator Flood is getting at. If someone has been convicted of first-degree murder, and has committed a crime that is just simply awful under any standard of morality that we could possibly apply, then they should serve the rest of their lives in prison. They should not have the opportunity to live the lives that others live. They have given up that right. And though I can't speak for other members of the committee, we didn't have a chance to look at this amendment in the committee, I think I can support it. And I certainly am not speaking for Senator Chambers or anyone else. And I think it will be interesting to hear the debate about it. But it's getting right at it. If the issue...I think Speaker Flood mentioned yesterday, what we really need to do is examine the criminal justice system as a whole. I agree, because those who run around the state saying, we're tough on crime because we have a death penalty, are simply ignoring the facts. The facts do not support that conclusion. It is simply rhetoric to run around and...in my view. And I've come to this

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conclusion after looking at the facts in the committee, and quite frankly, over the last several years. And all of us have lived out in society--we haven't lived in a box. We know what has happened. We know in reality that crime has gone up. We know in reality that the death penalty has not impacted crime. We know that, we know that. So let's look seriously at Speaker Flood's amendment, let's incarcerate people with certainty. [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR ASHFORD: Let's incarcerate people with certainty. Let's have a punishment that is certain, that is effective, and that's efficient. And to simply run around and say, I'm for the death penalty, therefore, I am tough on crime, just doesn't sell anymore. It's way too simplistic, and it doesn't reflect reality under any stretch of the facts. It does not, does not. It is a non sequitur; it absolutely is not supportable with the facts. So I'm going to support this amendment for now, listen to the debate, listen to what Senator Chambers and other members of the Judiciary Committee and other members have to say about it, but I think we're getting to it. Let's have a tough penalty for those who violate the law to this degree, let's make it certain, let's make it effective, and let's do it and start reducing crime in this state, because it has not gone down. Period. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Ashford. (Visitors introduced.) Senator Flood. [LB476]

SPEAKER FLOOD: Mr. President, thank you. We're going to be dividing the question at Senator Chambers' request here in a few minutes, and so I'd like some time to work on my amendment, but I would give Senator Chambers the opportunity to have the rest of my time. [LB476]

PRESIDENT SHEEHY: Senator Chambers. [LB476]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Mr. Speaker. Members of the Legislature, this is an amendment which does have some plausibility. I have not had the opportunity to evaluate it, so I had asked Senator Flood would he break his amendment into maybe three major parts, so that we can look at those chunks, discuss them individually, digest them, and see whether or not they do fit in with abolishing the death penalty. Here is what we have to keep in mind: Even when the death penalty no longer exists, there has to be something to distinguish a murder which carries a straight life sentence from one which carries a life sentence without the possibility of parole. While there is a death penalty, the courts have said--the U.S. Supreme Court--that all murders are bad. That has to be kept in mind. But when you talk about administering a punishment that takes a person's life, then you must discuss this issue analytically, in great detail, and with great care. So the ordinary murder cannot carry a death penalty under rulings by the U.S. Supreme Court. An ordinary murder which does not have

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aggravating circumstances cannot carry the death penalty. If a court imposed a death sentence on an ordinary murder, it would be struck down by the state's supreme court, and if that court did not do it, the U.S. Supreme Court would strike it down. This is why the emphasis by the courts has been that the aggravating circumstances must be established beyond a reasonable doubt, and the jury must make that determination. So every murder is bad, but when you're talking about categorizing punishments, you have to have something to distinguish the murder which carries a life sentence from the one that carries death. When we replace the death penalty with a life-without-parole sentence, there must be something articulable, as the court might say, some objective basis--to the extent you can make anything objective in this area--to show that this murder carrying life without parole is somehow more aggravated, more serious, worthy of the highest punishment that the state can give, as opposed to a straight life sentence. So I'm willing to look at what Senator Flood is presenting to us, but I don't want to leave the sentencer with no direction or guidance whatsoever. That would put us back to where we were before the court came down with this Furman decision in 1972, which struck down all death penalty laws, because the one who announced the sentence had no guidance or direction whatsoever in handing down that sentence. In the Furman case, a plurality of the judges had said that you have got to limit the discretion of the sentencer. You must guide that discretion with some objective standards, so that it is clear... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR CHAMBERS: ...you are looking at the specific crime, then you are looking at the particular perpetrator, the circumstances of that perpetrator, and then you must add those aggravators to show that this murder, indeed, was different from the run-of-the-mill or routine murder. So when Senator Flood finishes his division, we can then take each of those divisions and go into the detail necessary to understand just what it is that's being presented and why. Thank you, Mr. President, and thank you again, Mr. Speaker. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Erdman. [LB476]

SENATOR ERDMAN: Mr. President and members of the Legislature, I've enjoyed or I have learned a lot from the discussion yesterday, and took some notes on what, generally, the debate was, and I concur with the Speaker and others about the discussion that we've had to date and hopefully that we will continue the same level of...caliber of the discussion. I think from the response that I heard, or at least the statement earlier this morning from Senator Ashford, it is an emotional issue. There's a lot of passion. There's a lot of passion for the law, and I think that's what we saw from Senator Ashford and his perspective. I'd like to go back just briefly, though, and touch base on some of the things that I heard yesterday, and provide some additional information. I don't believe it undermines or reduces the arguments that were made, but

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I do think that there needs to be some further clarification. Generally, we centered around yesterday a few key areas, and one of the things that I heard yesterday--and before I get into that, I understand that the Speaker and Senator Chambers and others are working on dividing this, and I will try to generally confine my remarks to the subject that we discussed yesterday, as opposed to discussing the amendment before us, as the actual motion before us may change here in the near future. One of the issues that was brought up was the cost, the cost of carrying out a sentence of death, or the cost of prosecuting an individual under statutes under the death penalty. One of the examples that was given was North Carolina. The comment that was made was that it has been stated that it costs approximately \$2 million more to prosecute an individual under the sentence of death or a death penalty case, than it does for life without parole or a life sentence. If you actually go and read the North Carolina study--and I haven't read all of it; I'm in the process of looking through the Duke study; it was actually done in 1993. And again, for a point of information, recognize that the '93 time line predates the 2002 Ring decision and the change that we have made in our existing law that was done in the special session. And so while we're not comparing apples and apples, if that was the benchmark or the point in time that we were going to refer to, then I think it's appropriate to analyze what that study actually said. There's a statement, and I believe this is generally referred to in some circles that oppose the death penalty, that it approximately costs \$2.16 million for the average cost of the execution for all death penalty cases. The way that you arrive at that number is that if you had ten individuals that potentially were all going to seek or be in front of the court on charges pending them for a death penalty case, if you compile all of those into one total cost--only one person is executed--then you can get to \$2.6 million dollars per case, or per individual, because only one person was actually executed, and therefore, the total cost is borne by that one individual. That's fuzzy math. In fact, if you actually read the study and if you go and look at the study, it further excludes some key points from the other side of the equation, and that's the life sentence provision. It only assumes a 20-year provision. It doesn't assume life without parole. And so if you're going to include that, you have to add another \$69,000 a year on top of that, to truly get to a true life sentence. So to compare apples and apples, you have to add between \$500,000 and \$750,000 per prisoner to get to a true life sentence. In fact, if you read the statement in the executive summary of that report, it has a couple of key provisions, and again, there is supporting information on one side, and then there's supporting information on the other side. I think you'll find that true in the study that was done in Nebraska in '99 through 2002, that there are things that will support some sides, and things that will support other sides, and depending upon where you fall on the debate... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR ERDMAN: ...on the death penalty, you may or may not agree with that, and may or may not choose to use that on the floor. But the prison costs that were assumed in the Duke study from 1993, the North Carolina study, is that it approximately saved the

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department of corrections \$166,000 if an individual was sentenced to death and executed after 10 years, compared to an individual who was paroled after 20. And logically you can argue that people in Nebraska have been on death row longer than that. The cost of pursuing the death penalty was \$163,000 more. So actually, it didn't cost any more. Those are the types of things in the study. It is true that it may cost more because of the prosecutorial proceedings, but you have to also weigh in the other total cost of incarceration which at times are left out of some of these studies. So I've appreciated the discussion, and candidly, I'm learning a lot. As a nonattorney, as someone that has looked into this issue and has had legislation in this area in the past, I'm willing to learn, and I think that's appropriate for this process, is to educate one another and to sharpen our discussions, to understand what the true facts are. But I do think that in the context of this, that addition information probably does need to be... [LB476]

PRESIDENT SHEEHY: Time, Senator. [LB476]

SENATOR ERDMAN: ...provided at times. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Senator Synowiecki, followed by Senator Carlson, Senator Fulton, and Senator Kruse and others. Senator Synowiecki. [LB476]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor, members of the Legislature. Much like Senator Pedersen noted yesterday, when I came to the Legislature myself I thought I was in favor of the death penalty. Actually, the day I was sworn for this job, a newspaper reporter asked me my views on the death penalty. I thought, well, I've got to take some positions on some heavy-duty issues, and my kind of knee-jerk, simpleminded response, without any really deep down deliberations on my behalf, I said I was in favor of the death penalty, which, you know, I really didn't...I'm trying to navigate through this, and I'm so appreciative of the depth and the reach of the debate yesterday. It really helped someone like me who is trying to navigate through this process, through this thought process, and through this issue. And I owe a lot of gratitude to the members of this Legislature for enlightening me yesterday. It was, as Senator Stuthman said,...I've been here five years. I never witnessed a debate of the nature that we had here yesterday, and as one that's kind of navigating through this, I'm much appreciative of that, actually. And drawing from that debate yesterday, and all the stuff I've been reading on the issue, I really do think that we have the death penalty mainly and primarily for retributive reasons, and I think we couch those retributive reasons into justice terminology. I think Senator Ashford kind of spoke to that--being tough--and we kind of couch retributive things and we embed them in, I think, justice terms in our thirst for justice in some of these sensational crimes. I think primarily we have the death penalty for the victims' families, in an effort to make them whole. But at the same time, I think our criminal justice system does not do a very good job in all areas...in other areas of criminal justice administration. I mean, you have simple

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assaults, misdemeanor level, felony level. You have thefts--theft by deception or actual physical thefts. You have white-collar crime. And I worked in the criminal justice system for 13 years. We do a very poor job, from a criminal justice perspective, of making victims whole on those level of crimes. So why would we think that we can do a good job, in terms of victim wholeness, in capital murder cases? I think Senator Lathrop's speech really targeted in on the unequal distribution, or unequal assessment relative to the death penalty as a sentence. I think if you take that, if you note that, and note, generally speaking, the criminal justice system does not do...it's really not a reservoir to make victims whole. It's a reservoir for punishment, and it's a reservoir for rehabilitation of offenders. It's not necessarily a place where victims find wholeness. Unfortunately, it's not. So I don't see where we can extend our thinking within the criminal justice system to capital murder cases, that we don't do very well, quite frankly, on lower-level offenses. Also, along the lines of Senator Pederson's thinking yesterday, and it's a part of my religion's social teaching on this issue, that now that we have... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR SYNOWIECKI: ...the ability in our modern society, now that we have the ability to deliver nonlethal means or methods to keep society safe, there really is no demonstrated need for the death penalty. My religion speaks to the death penalty as not being intrinsically evil in and of itself, but now that we have methods available to us in modern society that keeps and preserves society, and keeps society and members of our community safe, there is no demonstrated need for the death penalty. I know what's coming. We have this amendment. I wish we could give LB476 an up-and-down vote, then have the proponents and opponents work together before we get to Select File, rather than trying to do this on the floor. I wish we could have a vote on LB476. If it advances...and then we don't have to do all this stuff on the floor. I wish we could just go to a vote on the bill,... [LB476]

PRESIDENT SHEEHY: Time, Senator. [LB476]

SENATOR SYNOWIECKI: ...maintain the fidelity. Then the proponents and opponents can work together in the meantime. Thank you. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Senator Carlson. [LB476]

SENATOR CARLSON: Mr. President, members of the Legislature, I believe that this is perhaps the most somber and maybe the most difficult speech I have ever made. I've appreciated, but not enjoyed, the debate yesterday and today on LB476, Senator Chambers' bill to abolish the death penalty in Nebraska. The legislative process is one of debate, negotiation, and compromise, and I'm attempting that today. I have several questions. Senator Erdman alluded to one of those this morning, as he shared. Yesterday Senator Lathrop said it would save money to pass LB476. I'd like some solid

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evidence to support that statement. A statement was made that there are men who may have deserved the death penalty but are now out on the street. Where's the evidence, and why did this happen? Senator Flood said yesterday that in 1976, a twofold purpose was stated for the death penalty: first, retribution for the victim; secondly, a deterrent for would-be criminals. I would say it could be argued that the Bible, God's word, is against retribution. Jesus said, do not repay anyone evil for evil. Do not take revenge, but leave room for God's wrath. It is mine to avenge; I will repay, says the Lord. I'd also argue that because of the great time lapse between conviction and execution, it's not a deterrent. That's probably a fault of our justice system, which many times favors the criminal instead of the victim. I believe quick execution would serve as a deterrent, and think with me, that once we give up the option of the death penalty, it will be gone forever. A statement was also made that there are people walking around in prison that have committed worse crimes than those on death row. How can this be? I can't help but feel that this is an undermining of the justice system, just to prove it isn't fair to all, evenly administered, so let's throw away the procedure, the process. How does LB476 address the horrid problem of people walking around in prison that have committed worse crimes than those on death row? How does LB476 fix that? I also heard statements made yesterday about, what do those who vote for us think? This is a personal, moral, ethical issue with me, as I believe it is to all of you, and our voters' preference has nothing...absolutely no place in this debate and this vote. Senator Chambers indicated the penalty isn't applied uniformly because some county prosecutors don't believe in the death penalty, so won't apply it. These prosecutors are to follow the law, not interject their personal beliefs, and if they can't do that, they should resign. Cruel, unusual... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR CARLSON: ...punishment--electrocution. This is interesting. We're concerned about cruel and unusual punishment on someone who has forced much worse cruel and unusual punishment on the victim. Why do we even care? And I believe it's because we're focusing on a very important principle, the value of human life. LB476 goes to great lengths to protect and extend the lives of the lowest of human beings, those who have committed the most heinous crimes on, for the most part, defenseless victims. They are guilty people, not innocent. Senator Chambers has shown a genuine concern for these lives and considers them to have considerable value. [LB476]

PRESIDENT SHEEHY: Time, Senator. [LB476]

SENATOR CARLSON: Thank you. [LB476]

PRESIDENT SHEEHY: Senator Fulton. [LB476]

SENATOR FULTON: Ouch. Thank you, Mr. President, members of the Legislature. I

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refrained from speaking yesterday, because I've...just out of deference for those who have put in a lot more time than me on this, so I thank Senator Chambers and Senator Flood. I am going to speak today, but I would like to yield--I will do that later--I would like to yield the rest of my time to Senator Carlson, if I could. [LB476]

PRESIDENT SHEEHY: Senator Carlson. [LB476]

SENATOR CARLSON: Thank you, Mr. President. Thank you, Senator Fulton. Senator Chambers is hopeful we will become a more civilized and orderly society. He's also concerned about humane treatment. I could hear it clearly in his description of how the straps were applied to John Joubert. I heard the passion when he talked last week about fair and humane treatment of animals, and I respect him for it. He operates by principles, is passionate about it, and I'm certain he'll keep his word in regard to it. If it's correct to be concerned about the rights of and lives of the lowest of the lowest, it has got to be even more right to be concerned about protecting the lives of the defenseless and innocent of our society--the unborn. Our family has the greatest, most beautiful twin grandchildren, who are 21 months old. They love their grandpa and grandma, and those of you who have experienced that know what I'm talking about. There's nothing like it. They needed protection, however, because they weren't full term, and were born at eight months. They got along beautifully and have filled our family with love and joy. They were born at the same age that our much-flawed laws allow for partial birth abortion. In that barbaric process, very much alive children are ripped limb from limb from the womb. Sharp objects pierce the brain, to kill--legal capital punishment in our civilized society. The U.S. Supreme Court says all murder is bad. As I've said, Senator Chambers, you're a principled man of your word. If you support me next year on an anti-abortion bill, I will glad turn my testimony to positive for LB476. I'll speak out for it, I will vote for it, and I believe God will be pleased with both you and me. That will demonstrate consistent testimony. I will move to bring pro-life in the abolishment of the death penalty to match my pro-life stance for the unborn, which I will never compromise. Then, we would be in agreement. People who allow abortion at the start of life should also be consistent and stand for capital punishment after the worst of crimes. That's consistency. I thank you for listening. I invite you to join me opposing capital punishment at both ends of the spectrum. Thank you. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Kruse, followed by Senator Chambers, Senator Lathrop, and Senator Schimek. Senator Kruse. [LB476]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the amendment and of the bill. Senator Ashford a bit ago almost was pounding the pulpit, saying the system is not working. I wanted to jump up and shout amen, and then I remembered, I'm a Methodist, not a Baptist, and I can't do that. (Laughter) But he's right on target. The system is not working, and one of the gaps that we have is the whole thought about deterrents. I welcomed the number of comments about it. When we're

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doing a statistical review of deterrents, we forget that some time has passed. You can't compare deterrents from 1900 to the present day. They do not compare. On the frontier, which I've studied pretty carefully and can tell you some hilarious events of hangings--some of them are really humorous--on the frontier, hanging had a deterrent effect. They didn't very often hang somebody for killing somebody, but they sure hung them for stealing a horse, and it had a great deterrent effect. But now we have put a time element in there that has destroyed that deterrent effect, or very nearly destroyed it. It has greatly compromised it. I remember talking with some young men in my neighborhood who had a friend for a thug. He's 20 years old and he's out there to kill people. He doesn't expect to live to 25. Is he bothered by the death sentence? Not a bit. Think about it from his point of view. He's...if he goes out and kills this person in a heinous way, he's guaranteed to live for another 20 years. He gets an extra 15 years for killing somebody, when he adds onto his own imagination. And the Speaker's comments about the aggravator factors plugs into this. The aggravator factors are not applied equally. There is bias here. The Speaker said yesterday that it's like a drunk driver; he does this and he takes the punishment, and then later apologized--it wasn't comparable. Well, his approach was absolutely on target. I speak of persons, including our own family, where a teenager paralyzed our son for life. He had no penalty, no penalty. Not any penalty, except having to go into court and back out again. If it had been a different judge, he could have been in prison for a year. We...the system is not working because there is bias within the application of aggravator factors. Forty-four mentally retarded persons have been executed in the last 30 years in the United States. If you want to think about application and justice with a blindfold, or without a blindfold, think about that. One of these persons had had a lobotomy. I used to work in a mental hospital; I know about lobotomies. Put an ice pick in past the eye and get in there and do a food mixer treatment of the frontal lobe, which destroys a lot of the ability for making decisions. And you look at this poor, pathetic person and decide that he's the one that should be executed. Plus, the mentally retarded person has an emotional need to please. Any of us that have worked... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR KRUSE: ...with them know that. And therefore, he will confess. I will reserve comments about the method of execution. I think the...I hope that we get to that. But certainly, I have some much better options than our two present options, and will be able to show them using my wife as the one who has killed me and dismembered me and laid me all over the lawn. I think you ought to think about that kind of a possibility. I worry about it every day. Thank you. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Chambers. [LB476]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Carlson made a challenge, not in the sense of adversarial, but he sees an inconsistency in my

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favoring and unwaveringly standing for a woman's right to make a choice as to whether or not she will carry an abortion...a pregnancy to term. Senator Carlson has beliefs based in religion. He and people with that view can say that abortion is a sin of the highest order, and I have no argument against them. We go where our beliefs take us. I'm a man without religion. I understand, I can grasp those things that I can see, that I can smell, that I can taste, that I can hear, that I can feel. But that is not all that I understand. I understand that people have rights. When Senator Carlson looks at the issue of abortion, apparently he looks at it from the position of the fetus. I look at it from the position of the woman. The woman is a full-fledged person in being. The woman is to make those personal, intimate choices and decisions on her own, without involvement or intrusion or interference from the state. If there are consequences to be borne from that decision, the woman bears those consequences. But my belief is that no outside person, and certainly not the state, has the right to dictate to that woman that she must carry a pregnancy to term. So I will always support a woman's right to a choice. If I were religion-oriented, as are various people who are opposed to abortion under any and all circumstances, if that were my religious conviction and I presumed myself to be a religious person, I would follow where that religion took me. But that is not my belief, and I do not impose mine on anybody. On the other hand, those people who say out of their own mouth, and attend a church which teaches that the death penalty is unjustified and it is wrong morally when the perpetrator can be prevented from harming anybody else without the infliction of a lethal punishment...John Paul II and I agree on that completely, and Benedict XVI has joined us, and now we have, in a sense, a Trinity, or maybe a Bermuda Triangle. And within that triangle disappears the death penalty, and in my view, never to be heard from again, when it comes to a society which deems itself to be civilized. The Supreme Court stated in many different ways... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR CHAMBERS: ...in the Furman case, which Senator Flood never touched on, that the death penalty, because of its finality and enormity, is different from any other punishment. And the reason you have an Eighth Amendment prohibiting cruel and unusual punishment is because you never have the right, as a state, to destroy the essential dignity and integrity of a human being. So you do not allow these torturous punishments, because you would destroy the human dignity, the humanness of that person being treated in that fashion, and the humanity of the state which inflicts those barbarous, cruel, unnecessary punishments. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Chambers. [LB476]

SENATOR CHAMBERS: Mr. President, I'm asking that we divide the question, and Senator Flood and I will approach the bench, if we may do so? [LB476]

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PRESIDENT SHEEHY: So ordered. [LB476]

SENATOR CHAMBERS: Thank you. [LB476]

PRESIDENT SHEEHY: Senator Chambers, you're recognized. [LB476]

SENATOR CHAMBERS: Mr. President, in view of the fact that additional work needs to be done, I'm withdrawing my request at this time to divide the question. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Chambers. The question to divide is withdrawn. (Visitors introduced.) Floor discussion will continue on AM307 to LB476. We have Senator Lathrop, followed by Senator Schimek, Senator Dierks, and others. Senator Lathrop. [LB476]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate, once again, the debate that we are having this morning. I think that what we have seen, and particularly this morning, is that you can have a lot of reasons for supporting LB476. We have religious reasons that have been expressed by Senator Synowiecki, and so eloquently expressed by Senator Carlson. I truly appreciate your remarks. You have treated the subject matter with the respect that it deserves. We can be in favor of LB476 because we believe that as a society, we have come further than to kill people as part of our punishment. That was so well put by Senator Kopplin yesterday. Senator Chambers has a great deal of concern for the people who sit on death row, and that, too, is a reason to support LB476. My reasons for supporting LB476 have much to do with how victims of these murders are treated. Yesterday I mentioned that there have been 175 death-penalty-eligible cases in Nebraska since the death penalty came back in the seventies. Only 31 of those people have been given the death penalty--that is, 140 families who have been told by the institution, by the death penalty institution, that the loss of their loved one doesn't warrant the death penalty. And there are a lot of reasons for that. These families are being victimized by the manner in which the death penalty is carried out in the state of Nebraska. Of the 31 people who have been given a death sentence, only three have found their way to the electric chair. That is a 7.6 percent rate. We talk about the statistics, we talk about the 140 people that did not get the death penalty, and we talk about the 28 people that haven't been executed. Those are families of victims. Those numbers represent people who have come to the death penalty for retribution and been turned away. I think we can support LB476 because it is cruel to the victims of these murders, it is cruel to their families. You should not have any illusions that life imprisonment means something less than life in prison. It's been nearly 20 years since a life sentence was commuted in this state. Life in prison will mean life in prison. Senator Flood has introduced AM307. AM307 will take away what lawyers refer to as the super due process rights of someone facing the death penalty. I think that's perfectly consistent with my position. I believe it is perfectly consistent with the support of LB476, and I support Senator Flood's amendment. If we support Senator Flood's

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amendment, incorporate it into LB476, all these people who are committing these ridiculous murders and these heinous acts will be treated similarly, and more importantly, the families of the victims... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR LATHROP: ...who have lost loved ones to these terrible murders will be treated equally. They will have expectations which are reasonable and fair, and they will not be put through the roller coaster of 20 years of appeals and litigation. And for that reason, I support the amendment, AM307. Thank you. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Schimek. [LB476]

SENATOR SCHIMEK: Yes, thank you, Mr. President. I would like to yield my time to Senator Chambers, if I might. [LB476]

PRESIDENT SHEEHY: Senator Chambers. [LB476]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Schimek. Members of the Legislature, I want it clear that I do not endorse murder. I do not justify murderers or murdering. I am puzzled when even a judge, in handing down a sentence, will say, this murder was senseless. I think every murder is senseless. If there is a murder that makes sense, it is not murder. It is justifiable homicide, it is self-defense, it is an accident. But to say that somebody, who with premeditated malice, intentionally and knowingly takes the life of another person, that to me makes no sense. And when you look at what these terms, "premeditated," "malice," "intentional"--when you look at what they mean, they create a context in which you're dealing with a person that has no justification whatsoever in depriving somebody else of his or her life. And that makes no sense to me. Maybe it does to some people. But I'm saying that to indicate also that in saying I don't want people executed, I'm not forgetting the victims. Would people say that John Paul II and Benedict XVI have no concern for the victims because they think the death penalty, under circumstances that exist today, is morally indefensible? Would they say that a defense attorney approves of murder because he or she zealously defends the person accused of that crime? No. And the ability to think is what puts us in a position to separate out these concepts and understand what it is that we're dealing with. Speaking of victims, in the early days in England and in other countries, if I killed a member of your family, that did not involve the state. That was person against person, and the family of the one whom I killed had the right to kill me. But if a member of that family killed me, then my family is going to take revenge, and there develops what were known as blood feuds. Among the Jews there were places of refuge, and if a person being pursued by somebody who intended to take his life made it to that position, that place of refuge, the taking of the life could not be done. The altar always provided refuge, and one of those persons in the Old Testament committed an unspeakable

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offense, because he killed a person while that person was holding onto the horns of the altar. These are things that have come down to us through history, where struggles existed in societies relative to, how do you deal with one person who kills another? Even though in Genesis, where God is supposed to have said, he who sheds a man's blood, by man shall his blood be shed. Senator Carlson can tell you that the first... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR CHAMBERS: ...murderer was Cain, who killed his brother. And was Cain killed? No. God put a mark on Cain so that no man would lift his hand against him. So how is God on the one hand to say that he who sheds blood, his life shall be shed by another man, then put a mark on the first murderer, so that that principle would not be carried out? People attribute things to God. They develop notions in religion that are inconsistent, so we have to as a Legislature look beyond that and do what is practical and realistic and workable in a society which is far from perfect. As one of those people said--it may have been James Madison--if this were a society of angels, we would not need any laws. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Senator Dierks. [LB476]

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, it's a difficult topic, and it's one we must deal with. And I have to hand out a credit to Senator Chambers for his persistence in this issue. I, too, oppose the death penalty. I've heard too many cases where people were put to death because of the death penalty and were later found to be innocent. And if that only happened once, it's just once too many times. When I ran for office the very first time, I made it known to the people that I was representing, or was going to represent, that I would do what the majority of them asked me to do, as far as voting on issues. And I said the only thing I reserve is, on the moral issues, the right to remain faithful to my views on abortion and on the death penalty. And I haven't changed from that once, and it's never bothered me in the election. I've never had...I've never been questioned about it, and everybody knows that this is where I stand. I think we do owe it to ourselves to do away with the death penalty, and I think that the amendment that Senator Flood adds is worthy. With that, I will give the rest of my time to Senator Nantkes. [LB476]

PRESIDENT SHEEHY: Senator Nantkes, you have about 3 minutes, 20 seconds. [LB476]

SENATOR NANTKES: Thank you, Mr. President, members. I join Senator Lathrop in support of this amendment, and I join Senator Chambers in support of LB476. I'm opposed to the death penalty for the following reasons. I don't believe it has a deterrent

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value, and conclusions from study after study, trying to prove otherwise, have not conclusively shown that. I do not believe that it has been or will be imposed in a way that's free from racial or socioeconomic bias, a bias that's so severe that it rises to the level of constitutional violation. I do not believe it will remain much longer as an institution within American society. It has been abandoned in law or in fact throughout the vast majority of the civilized world. But most simply, I'm opposed to the death penalty because I believe it's wrong. It's morally reprehensible. State-imposed execution denies the equality and humanity of each of us. As stated by the philosopher Immanuel Kant, if you kill another, you kill yourself, meaning that the undeserved evil which anyone commits on another is to be regarded as perpetrated upon himself. And stated by Albert Camus, capital punishment is, in fact, the most premeditated of all murders. Quoting Justice Brennan from the seminal Supreme Court case, Furman v. Georgia, decided in 1972, death is truly an awesome punishment. The calculated killing by the state involves, by its very nature, the denial of the executed person's humanity. We should abolish state-sanctioned execution and instead replace it with the most appropriate punishment available to us within existing legal and moral frameworks. That's life in prison without the possibility of parole. That sentence, that punishment, ensures public safety, responsibly expends our state's financial resources, and in fact, affirms the humanity and equality of each of us. Thank you. With that, I'd yield the balance of my time to Senator Chambers, if he so desires. [LB476]

PRESIDENT SHEEHY: Senator Chambers, you have 1 minute. [LB476]

SENATOR CHAMBERS: Thank you, Senator Nantkes. Thank you, Mr. President. Maybe I can say quickly what I was going to say about the victim, but I probably can't, so I won't get into that. The discussion is taking a good turn, in my opinion. I think it has been conducted at a level which is informative and instructive to the public, and when that occurs, we as legislators are performing the highest service I think we can. So regardless of how somebody may vote on this issue, up to this point everybody has been great. If you vote the wrong way, all bets are off. (Laugh) Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator. Senator Louden, followed by Senator Flood, Aguilar, Senator Preister. Senator Louden. [LB476]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. This is the first time that I've stood to address LB476, and of course, the amendment, AM307. I agree with Senator Flood that this is probably an amendment that would help this bill in case that it does get passed. I myself am against LB476, and I will illustrate some of the reasons why. As I heard the discussion go, that at the present time, the system doesn't work. Well, perhaps the system should be refined so that it does work. It isn't that there was bad legislation passed. It's probably, perhaps, the way that it's been used, been utilized. Some of it has been interpreted over the years. You want to remember, if you

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repeal LB476 (sic), then that's it forever. We'll never go back to it again, probably. Be a considerable amount of debate and controversy to reinstate the death penalty, because very few states have done that. There have been times that they have. But you also want to remember that there can be times in the future when heinous crimes will be committed again, that that perhaps will be the only thing that will satisfy society in the future at different times. Just because at this present time it hasn't been what people think, doesn't mean that society won't change, and in 10, 15 years from now, or even 5 for that matter. Any time you have these heinous crimes, especially where adults commit crimes on children--kill them for no reason at all, kill them, cut them up and feed them to the dogs--this is all things that people are sitting on death row now for. So there are times when, whether it's a deterrent or not, but it has to be something that probably society has to have out there to address some of the serious situations that people cause to other people. When you talk about the family and the hardships it imposes on them, those people that commit those crimes should be the ones that are guilty of that. They're the ones that have to decide on what they're doing to their own families when they commit those crimes. It isn't up to society, the rest of society, to always consider that. When...you have to consider the rights of the victims. When you talk about how inhumane it is that some of these people are put, as Senator Chambers has described, have you ever stopped to think about the victims and what they went through at times like that, when they found these people bound and cut up in pieces and tortured and that sort of thing? So I think it's good to have a debate on this subject about now. It hasn't been fully debated for several years. A few years ago it was...there was some work done on capital punishment--I think in about 2002. So that's probably the last time it's been...much has been said. But I think, as the time goes on, we have to be very careful about changing the rules of society in such a way that we think satisfies our needs at the present time, because I think as time goes on, there can be ways that will be done. Another thing that has to be considered, that if it gets to be unpopular for a death penalty...the jury is one that can decide this. So they don't necessarily have to always use the death penalty, which as we noted on some of the cases, hasn't been used. So I think if it's there for some of the particular types of crimes,... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR LOUDEN: ...then I think it's up to the jury, and that's what we're usually tried by, is our own peers. So I have no problem with voting against LB476. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Flood. [LB476]

SPEAKER FLOOD: Thank you, members. Mr. President, thank you. I want to give everybody an update as to where I think we are. The question that Senator Chambers raised moments ago was whether the question...whether the AM307 amendment that I filed could be divisible. And we're working on that, so right now you are going to receive

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a short summary that does break the bill into divisions, following the good work of Denise, in my office, who has really worked hard. And this handout that you see in front of you is really also a very good summary of what AM307 does. I want to be clear, there's no tricky business here. This amendment was offered by me, I think, as a thoughtful way of saying, okay, if the decision of this state is to repeal the death penalty, then it should be done in a way that also reduces the super due process that's been built into our system over the years. That said, I remain opposed to LB476, the underlying bill. But I do think this amendment, if adopted, either in parts or its entirety, does a good job of lessening some of the burden that a prosecutor might face in a situation where he or she would have ordinarily sought the death penalty. Now, I wasn't in the Legislature in 2002 during the third session, the special session that was convened following the Ring v. Arizona case, specifically where LB1 was adopted and passed by the...signed by the Governor. And I guess I would look to members of the Legislature, specifically Senator Chambers...and if I may, Mr. President, I'd like to ask Senator Chambers a question. [LB476]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB476]

SENATOR CHAMBERS: Yes, I will. [LB476]

SPEAKER FLOOD: Senator Chambers, you were obviously present and part of the discussion and crafting of LB1 in 2002. That is correct, isn't it? [LB476]

SENATOR CHAMBERS: I was here, and I was very much opposed to that bill. But if you ask me a question about some aspect of it that I can answer, I will, nevertheless. [LB476]

SPEAKER FLOOD: Well, I want to...and I'm talking about section numbers here, which is just for the record. But knowing that you probably understand this, Sections 11 to 14 and 16 and 17 of LB1 were amended during the discussion of LB1 from life imprisonment to life imprisonment without the possibility of parole. And I know that death penalty opponents were interested in having that language in the bill so that it would show that LB1 dealt with more than one subject, not necessarily procedures relating to the death penalty, but also adding the additional option of life without the possibility of parole. And there are those that would suggest that life imprisonment and life without the possibility of parole are really the same thing, that (a) we already have life imprisonment without the possibility of parole as an option; but life imprisonment is the same because each one of those crimes carry no bottom number, no minimum number of years that have to be served. Is that an accurate analysis of where we're at with life imprisonment? [LB476]

SENATOR CHAMBERS: Not really, because...and Senator Flood, this is not to fritter away your time. What the Nebraska Supreme Court did was to say that putting life

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without possibility of parole into that bill was not proper, so it removed that, and there is no life without possibility of parole. What the court said is that when the Legislature is dealing with one subject and it uses different language in describing that subject, it means something different in each instance. So there is a logical distinction and a legal distinction between a straight life sentence and life without the possibility of parole, and the Nebraska Supreme Court has recognized that. Don't ask me to draw a line. [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SPEAKER FLOOD: Well, I appreciate that. That helps me get a little bit further. I guess my next question is...and it's my understanding that there is no way to parole on a straight life imprisonment sentence, regardless of whether it says "without the possibility of parole," or just "life imprisonment." There is no way to parole, already, if you receive a life sentence. Is that true? [LB476]

SENATOR CHAMBERS: The only way--and it would be the same in both cases--would be if there was a commutation by the Board of Pardons to a term of years. [LB476]

SPEAKER FLOOD: Thank you, Senator Chambers. I appreciate that. And rightfully so, he looks toward the Board of Pardons. And I think the point I want to make here is legal in nature. It says...it is that life in prison, which is currently in our statute as an option for the penalty for the capital murder cases found in the first-degree murder section, is already the same as life imprisonment without the possibility of parole. "Without the possibility of parole" are words, in my opinion, that put senators and legislators... [LB476]

PRESIDENT SHEEHY: Time, Senator. [LB476]

SPEAKER FLOOD: ...at rest. And I'll come back to this issue. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Aguilar. [LB476]

SENATOR AGUILAR: Thank you, Mr. President and members. When I came to this body eight years ago, I listed on a survey, as many of you did, that I was a supporter of the death penalty. Some of the debate taking place over the last two days has kind of caused me some different thoughts in my mind, different thought processes. And I mentioned this to some people, and what they said to me was, you know what, you need to remain consistent in your decision. Everybody involved in politics likes to maintain consistency. Well, consistency is exactly why I'm having a problem with maintaining my position. I honestly believe there is a lack of consistency in what we're doing today. And I will try to explain that to you in detail, and at the same time I'm going to answer one of Senator Carlson's questions, when he asked the questions, who do we

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have out there that is worse than some of the people that has been put to death? I'm going to tell you about a person from Grand Island, six foot four, 240 pounds. He beat his two-year-old daughter to death. And he didn't just do this as a matter-of-fact, quick thing happening; he did it over a 24-hour period. The autopsy showed that bruises overlapped bruises. She was beaten with a belt, she was kicked, she was picked up by her hair and thrown to the floor. And what awful thing did she do to deserve this treatment? She wet herself. That was it. Her father threw her in the bathtub, drug her out, soaking wet, made her stand on a box, and put a fan on her, because it was cold. Made her hold her arms out for a period of hours. Every time she dropped her arms, he struck her with a belt. After a couple of hours she, exhausted, fell to the floor. He picked her up and threw her on the floor again, made her get back up on the box, and started again. This went on for 24 hours. By his own admission, he said, actually, he beat her for three or four days. Finally, this poor child died, the best thing that could have happened at that time in her life. I attended her funeral. I carried her casket. And the people of Grand Island were every bit as responsive as what I was to this horrific, horrific crime. I submit to you, if anybody needs to die, that man needed to die. But he didn't. He was convicted of second-degree murder. That is the worst case of inconsistency in our law that I have ever heard of. That's why I'm struggling with this decision. And I yield the rest of my time to Senator Chambers. [LB476]

PRESIDENT SHEEHY: Senator Chambers, you have about two minutes. [LB476]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Aguilar. I'm going to touch on something Senator Louden said. He said, fix the system, that some things are not the responsibility of others to be concerned about, that if the family of a murderer is troubled, that's tough; the murderer did it. I'm not quite as cold-blooded as Senator Louden. I don't believe in punishing the fathers for the sins of the children, nor the children for the sins of the father. The one who did it is the one who should be punished. But what Senator Louden has not picked up through this discussion, or the material handed out, is that the system cannot be fixed. It cannot be. Somebody had suggested that executions be carried out more expeditiously. Had that happened, many of the people who have been found innocent absolutely would have been killed by now. That's why the courts have fashioned this apparently unwieldy system. The courts have said the legislatures are the ones who put the death penalty in place. [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR CHAMBERS: The courts must administer it, but the courts are going to do all they can to see that adequate attention is given to being fair before life is taken. But the courts, remember, are peopled by individuals who receive their appointment because of political considerations. So they say those things, but when you read the cases, their opinions that are supposed to justify their decisions, you see that the care that they talk about is not even exercised by they themselves. There are judges,

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Senator Loudon, who have said, this system is broken and it cannot be fixed. We cannot short-circuit the processes that are available to a condemned person. The appeals are going to be there; the post-conviction relief will be there, the attempt to get it; the seeking of habeas corpus in the federal system will have to be there. [LB476]

PRESIDENT SHEEHY: Time, Senator. [LB476]

SENATOR CHAMBERS: Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Preister, followed by Senator Erdman, Senator Friend, and Senator Langemeier. Senator Preister. [LB476]

SENATOR PREISTER: Thank you, Honorable President, friends all. Mr. President, I would yield my time to Senator Chambers. [LB476]

PRESIDENT SHEEHY: Senator Chambers. [LB476]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Preister. I'm going to talk about this notion of the victims. I had started the idea of the blood feud-- take care of what was done to my family, you take care of what was done to yours. It reached the point, in England, where the king was affected, because men were not available to fill the ranks of his army. So the king said, when a murder is committed, that is not a crime against the family of the victim; it is a crime against the king, it is a crime against the state. And therefore, any charge brought, any action prosecuted, will be in the name of the state, not the victim, not the family's victim. And if you read criminal cases today, from a traffic ticket up to murder, it says, the state versus whoever it is. So what is there that is available for the family? Damages. Damages must be paid to that family of the victim. There are reasons, grounded in politics and economics, the practicalities of statecraft, that brought us to where we are today. These things didn't just pop up full-blown and full-grown out of nowhere. They evolved. England, as one English person said, has the most humane laws found on the face of the earth, but they had the most brutal, barbaric punishments. They would draw and quarter a person while that person was living. And that was a term that applied to different things. The drawing in some cases meant the person was put on a sled and pulled behind a horse until they got to the place of execution. After the person was executed by hanging, sometimes by decapitation, they would then attach four horses to the limbs of the person and drive them until the person was dismembered. And it took a lot more force to dismember a body than people thought. Disemboweling occurred, and that would occur prior to a person dying, where they would literally take the insides out of a living person. They would half-hang a person, cut him down, disembowel him, then hang him again, cut his head off, cover it with tar, put it on a large stake, and stick it by the highway as a deterrent. But England continued to have a high murder rate. There was no deterrence. So they put additional barbarity into their punishments, and still got nowhere. There

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grew up in England what was called jury nullification. I don't know how many shillings there are in a pound, Senator Carlson, but if a person stole, say, 4 pounds, that would be a capital offense. The jury would say the person stole 3 pounds and so many shillings, in order that the death penalty could not be imposed. If the death penalty were imposed on a person for stealing a cow, the jury would find that the person stole a heifer, which meant it had never borne offspring, so it was not a cow, in order to prevent the death penalty from being inflicted. There were death sentences handed down for changing... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR CHAMBERS: ...or mutilating money, stealing bits of money from banks. It was the bankers and the commercial people who said, remove the death penalty from these offenses, because there is no punishment now. The only punishment allowed under the law is the death penalty, jurors are not going to convict the person if he will die, so remove the death penalty and put one that the jury will impose. So many of the death...the bases for death sentences were removed from English law because the groups that were to be protected petitioned Parliament to remove these offenses, because no death penalty would be imposed, consequently, those offenses would not be punished at all. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Erdman. [LB476]

SENATOR ERDMAN: Mr. President and members of the Legislature. And Senator Carlson, I think your correction in my statement earlier was accurate. It's not enjoyable, but it is appreciative, and I will revise that remark, as well. I think this has been a high-level discussion, and I have appreciated the involvement in the discussion. I think one of the things that's been brought into this discussion, and I think rightfully so, is the global view of what happens in the United States regarding the death penalty in the cases that are potentially tried under that charge. I haven't done the research, but we have, as a state, done the research, and one of the things that I think is important in this discussion is that if you are truly opposed to the death penalty, there's probably not anything that's going to be said on this floor that is going to change your mind. And to that point, I...Senator Chambers' philosophical and principled position is as it is; it's chiseled in stone. That's understood. If the arguments are some of the other concerns relating to the system, I think there are valid concerns. But in light of those valid concerns, we also have to analyze the studying that's been done in the state of Nebraska. Now, some of it is not inconclusive. Some of it hasn't arrived at an ultimate finding of, well, this is the way that it is. But in the narrow scope of which was done, from '73 to '99, there are some findings. And these are the summary of principal findings and conclusions, as stated in the final report on the disposition of the Nebraska capital and noncapital homicide cases, 1973 to '79, a legal and empirical analysis. And this information is available on-line. Their first summary of principal findings and conclusions

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is: Our first finding is that there is no significant evidence of disparate treatment on the basis of race of defendant or victim in either of the major urban counties or the counties of greater Nebraska on the part of either prosecutors or judges. There are some disparities, but they are small, based on small samples, and not statistically significant, that they do not support a conclusion that Nebraska systems treats offenders differently on the basis of the race of the defendant or the victim. That's not based on a Maryland study. That's not based on a North Carolina study. That's based on Nebraska's own study. Finding number two: Our second finding is that compared to other jurisdictions on which data are available, the Nebraska capital charging and sentencing system appears to be reasonably consistent and successful in limiting death sentences to the most culpable offenders. Isn't that what our legal system is about, making sure that the ultimate penalty is available for the people who ultimately deserve it? Senator Aguilar, if I were in the case that you pointed out, and if I were on that jury, I have no doubt in my mind that if what you have told me this morning is absolutely true and was proven in court, that there is no question what the sentence on that individual should be, not in my mind, not at all. In the instance of Ray Mata, Jr. in western Nebraska, with the young man named Adam Gomez, no doubt in my mind there either. And in fact, the court and the prosecutor proceeded and received that sentence. So if you go through this process, there's prosec...I can't even say the word, prosecutorial freedom, if you will, on how they proceed. If you're a trial attorney before the court and you're going to stand on the floor and say, everybody who rises to this level should be convicted of it, your clients will probably be pretty surprised about that. That's why we go to court--to prove the charges. And if they are proven, then there are remedies under the law. [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR ERDMAN: There are five findings...six findings, excuse me, and I plan to proceed with these as we go further on. But there is discretion in our judicial process. There are guidelines provided. I'm not a lawyer. I've never stood in front of the court and argued on behalf of a client or on behalf of the state. But as I understand the process, if you're going to stand on the floor and say, 140 people should have got the death penalty but only 10 did, then you have removed the very thing that you cherish the most when you stand before the court representing a client, and that is the opportunity to work on behalf of your client to make sure that the state can prove their case. I will continue on. I'm trying to make sure that this discussion is healthy and is appropriate, as it is at this high level, that we come back to Nebraska. And I want to hear those arguments that Senator Aguilar and Senator Carlson has requested. There are other people here that are more knowledgeable than I. [LB476]

PRESIDENT SHEEHY: Time, Senator. [LB476]

SENATOR ERDMAN: Thank you, Mr. President. [LB476]

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PRESIDENT SHEEHY: (Visitors introduced.) Senator Friend. [LB476]

SENATOR FRIEND: Thank you Mr. President and members of the Legislature. Speaker Flood just walked by and saw my light was on, gave me kind of a weird look. And I said, look, I'll be fine; just relax. Members of the Legislature, the constitutional argument is as follows. No person shall be deprived of life, liberty, or property without the due process of law, the Fifth Amendment. The Eighth Amendment to the Constitution of the United States: Excessive bails shall not be required, nor excessive fines imposed, nor cruel and unusual punishment be inflicted. There's the constitutional rub, right there. That's it. This conversation for the last couple days--and logically so--has gone off in a lot of different directions, because it has to. A conversation like this has to do that. But this is the rub. The state has the authority, if it chooses to exercise that authority, in the form of representative democracy. And I'm talking about the death penalty. Is it...is the manner cruel and unusual? Again, the rub. Case law and arguments conflict, so we're left with policy decision making. That's what we have. You can break this in...you can break this discussion, and we have, into hundreds of categories. Three quick ones, as far as I'm concerned, are: philosophical or religious; equity, fairness of the application, and Senator Aguilar did an excellent job of laying out that piece of the discussion; and then legal, and that's what I was talking about just a couple seconds ago. The question is then this: Under...and shall we do it? Shall we keep applying it? My feeling, personal feeling...because sometimes that's all we're left with, after all the filtering through all the paperwork and the case files and the decisions throughout the country, are, how do you personally feel about it. And when you look in the mirror...and we've all had to make this decision. Mine is that under certain rare circumstances, the death penalty can and should be applied. Rare. And it can be argued that the execution of a murderer, a state-sanctioned execution, can actually express a certain type of respect for human life. It sends a moral message that that innocent life was so precious, the crime committed so horrific, that that particular person forfeits his or her right to remain alive. Now, death penalty opposition comes in so many different forms. It comes in the form of organized religion. Well, I'm a Catholic, and I've studied it, and I don't remember Thomas Aquinas and St. Augustine promoting this. Senator Chambers is correct. Benedict, John Paul II, quite arguably, in direct conflict with folks like Thomas Aquinas and St. Augustine,...Justice Scalia pointed this out. This movement, or this ideology, is more...the ideological shift, if you will, is more of a post-Freudian, secularist type of idea. [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR FRIEND: Look, I had an hour-long...my family is divided on this. I had an hour-long argument with my sister up in Wisconsin. She said, you're wrong, you're flat wrong. And I said, look,...45 minutes--I've only got 20 seconds left--45 minutes, I told her something that I will tell the entire body, after that argument, and I will tell the state of Nebraska. Because these are my beliefs, I will do nothing to promote the removal of

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the death penalty as the law of the land in the state of Nebraska. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Langemeier. [LB476]

SENATOR LANGEMEIER: Question. [LB476]

PRESIDENT SHEEHY: The question has been requested. Do I see five hands demanding such? I do see appropriate demand. The question before the body is, shall the debate now close on AM307? All those in favor vote yea; opposed, nay. Have all...Senator Langemeier. [LB476]

SENATOR LANGEMEIER: I request a call of the house. [LB476]

PRESIDENT SHEEHY: There is a request for a call of the house. The question is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB476]

CLERK: 36 ayes, 0 nays, Mr. President, to place the house under call. [LB476]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please return to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senator Langemeier, everyone is present. How would you like to proceed? [LB476]

SENATOR LANGEMEIER: I would accept call-in votes. [LB476]

PRESIDENT SHEEHY: Mr. Clerk. [LB476]

CLERK: Senator Hudkins voting yes, Senator Heidemann voting yes, Senator Karpisek voting yes, Senator Mines voting yes. [LB476]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB476]

CLERK: 27 ayes, 12 nays, Mr. President, to cease debate. [LB476]

PRESIDENT SHEEHY: Debate is ceased. Senator Flood, you're recognized to close on AM307. [LB476]

SPEAKER FLOOD: Thank you, Mr. President, members. Even if you're opposed to repealing the death penalty as Senator Chambers proposes in LB476, this amendment, I believe, is our duty as responsible state senators to adopt, because we are making a major change, should LB476 become the law in this state. We are saying that Nebraska

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no longer has the death penalty, and because we repeal the death penalty, so, too, shall we repeal provisions of our statutes that have built-in extra due process. What types of due process additions have we added since the mid-1970s? We've added requirements that each case is automatically appealable to the Nebraska Supreme Court. We have juries deciding whether or not there should...that the state has proven beyond a reasonable doubt the existence of aggravators. My opinion, and I believe the opinion shared by Senator Lathrop, other proponents of LB476, and I believe even Senator Chambers, on this amendment, is that if we go to a system that no longer has the death penalty, there is no legal reason to meet the extra burden of super due process, as developed through the years following the Furman case, the Ring case, the Gregg case, LB1 in 2002. We simply don't need it. And it will cost...it will reduce costs significantly in cases where the prosecutor seeks the penalty of life without the possibility of parole, pursuant to LB476. I offer to you that I think life without the possibility of parole is the same thing as life imprisonment. But there are distinctions, and Senator Chambers and I, I'm sure, will discuss them. This amendment is straightforward and simple. I offer you the summary of the amendments, although broken into divisions. The handout that I have with my initials and district number are in front of you. The only change I would make is, on page 1, the last paragraph should read, strikes language in Section 24 and 25 of LB476. That was an omission, but not intended to be left off by purpose...in purpose. So I believe this is the right direction for us to go, as far as adopting a thoughtful amendment, regardless of how you feel on the bill, and would urge your support. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Flood. You've heard the closing to AM307 to LB476. The question before the body is, shall AM307 be adopted? [LB476]

SPEAKER FLOOD: (Microphone malfunction)...for a roll call vote in regular order. [LB476]

PRESIDENT SHEEHY: Senator Flood requests a roll call vote in regular order. Mr. Clerk. [LB476]

CLERK: (Roll call vote taken, Legislative Journal pages 905-906.) 48 ayes, 0 nays, Mr. President, on the adoption of the amendment. [LB476]

PRESIDENT SHEEHY: AM307 is adopted. Next...the call is raised. Next amendment, Mr. Clerk. [LB476]

CLERK: Mr. President, the next amendment I have to the bill, Senator Flood, AM287. (Legislative Journal page 557.) [LB476]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on AM287. [LB476]

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SPEAKER FLOOD: Thank you, Mr. President, members. This is the amendment that adds the option of lethal injection as one of the state's methods of execution. I've given this a lot of thought, and I argued yesterday, very honestly, because I think the electric chair does not violate either the Eighth Amendment of the U.S. constitution or the Eighth Amendment of the Nebraska constitution. And I want to just make a couple of comments about what I think this amendment means at this point in the debate. First and foremost, this amendment introduces a different method of execution, a method of execution that in past years has had a public hearing; this year, it hasn't. Number two, Senator Chambers has introduced a bill that repeals the death penalty, and the policy discussion has been centered on whether we should have a death penalty or not, and currently, the method, as a subpart of that, is the electric chair. And number three, having been so impressed with the amount of discussion and the nature of this debate on a very difficult issue, I believe it would be in the best interest of the Legislature for me to withdraw this amendment this morning and allow the discussion to continue on the substantive policy question raised by Senator Chambers in LB476. My interest in withdrawing this does not mean I would not refile on Select File, although I do recognize this has not had a public hearing and would be subject to further scrutiny on the second level of debate, should this bill advance. But I also believe that should this bill not advance this year, this is a policy question that is just as significant as whether or not to have the death penalty. The question is whether or not we do it by means of electrocution or by means of lethal injection. Those are weighty topics, laden with the gravity befitting the punishment we're suggesting. So that said, Mr. President, I would like to yield Senator Chambers most of the balance of my time. I would ask that with a minute remaining, I be allowed to have the rest of my time back, and give me a chance to withdraw this amendment. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Senator Chambers, you have about 7 minutes, 30 seconds. [LB476]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Mr. Speaker. Members of the Legislature, if you're talking about fixing a broken system, you're not going to fix it by putting in place something which itself is broken. These are the states which have put executions on hold because of the very serious problems with lethal injection: Arkansas, California, Delaware, Florida, Maryland, Missouri, New Jersey, North Carolina, Ohio, South Dakota, Tennessee. The governor of New Jersey said, because a commission studying the death penalty said it should be abolished in New Jersey, he said he will sign a bill abolishing the death penalty. The governor of Maryland is opposed to the death penalty. And there are a number of other officials who, after expressing their opposition to the death penalty, were elected anyway. And on Select File, some of these matters will be gone into, to establish that people are not voting for an individual on the basis of one issue, especially such as this. We had no opposition to this bill when it was heard before the Judiciary Committee. If you look at the committee statement, you will see those who had come to testify in support of this bill. In Delaware,

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the court has certified, for the purposes of a class action law suit, all of the inmates on death row to challenge the constitutionality of lethal injection. The thing that led former Governor George (sic--Jeb) Bush to put all executions on hold in Florida is that it took over a half-hour to kill a man. In trying to insert these needles, they pushed them completely through his veins, into the soft tissue, and the drugs were flowing through his system, and they had to give him a second administration. Doctors and surgeons were horrified, and they said that second administration never should have occurred. Burns as long as a foot long were found on both his arms. So if somebody thinks these chemicals do not hurt, they don't understand the nature of them. One of them had been used to euthanize animals, but because of the pain that it caused, it was banned as a substance that could be used on animals. They start with this cocktail, and there are three drugs: thiopental sodium, which is the anesthetic; pancuronium bromide, which is the paralytic; then potassium chloride, which is to stop the heart, and it's the potassium chloride that causes the excruciating pain. They have discovered, after autopsies, that there was not enough anesthesia in the body for the person to be unconscious, but because of the paralytic agent, there was no movement that could be undertaken to show what was going on. So they knew that the person had suffered this lingering, excruciating pain, as the killing agent went through his system. There are doctors who said that since the inmate cannot be questioned about what he suffered, because he's dead, people might think there is no way to deal with this issue. But when operations have been performed, there have been instances where the person had regained consciousness, but because of the paralytic agent, so there would be no thrashing around, the person could not acknowledge it. One woman told how when they were using this laser device, she felt all of the pain. As the cut was made, the laser would seal off the blood. She could not move. She heard the doctors not only discussing what was going on, but some were even making comical statements. And this has happened to a number of people in a hospital setting. So when it is established that you have untrained people trying to place these needles, and not placing them properly, less than enough anesthetic is introduced to keep the person unconscious throughout the process. The cruelty, the unnecessary pain and suffering, in violation of the Eighth Amendment to the U.S. constitution, are present. We are making policy decisions. We're not bound by anything a court has said, in terms of, maybe this punishment is lawful, maybe it's constitutional. We should look at it. And courts have ruled--and this is why they are putting some of these executions on hold--no unnecessary or gratuitous pain can be a part of the infliction of a death sentence. What is coming clear is that there is no painless, clean, efficient way to kill somebody in a ritualistic manner as that done by the state. I had mentioned yesterday that I talked to some of the men who had volunteered to be on the death watch when a man was to be executed by Nebraska. Had they known what was entailed, they would not have done it. One of the things, believe it or not, that troubled them the most, was the ritualistic aspect of the ceremony, the rote carrying out of all of these things listed on a piece of paper that had to be done. When I was there with Joubert...by the way, there was a mistake...a misstatement in the paper. I did not witness the execution of any of these men. I accompanied them into the

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death chamber, to make sure they were not dealt with improperly, but I did not witness the execution itself. [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR CHAMBERS: This final point, then I'm going to give over to Senator Flood so he can withdraw his amendment. When they brought John Joubert into the hospital room and gave him brand-new clothes so that they could kill him, that was one of the most macabre, grotesque things that I had seen. It's like preparing an animal for a sacrifice. I give the time that I have remaining, Mr. President, to Senator Flood. [LB476]

PRESIDENT SHEEHY: Senator Flood, you have about 30 seconds. [LB476]

SPEAKER FLOOD: Thank you, Mr. President. Regardless of the fact that I am withdrawing AM287, I am still opposed to repealing the death penalty, at my very core, and I believe that this penalty exists to punish first-degree murder defendants in the way that's appropriate following their crime, the commission of their crime. That said, I withdraw AM287. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Flood. AM287 is withdrawn. Next amendment, Mr. Clerk. [LB476]

CLERK: Mr. President, Senator Kruse would move to amend with AM766. (Legislative Journal pages 906-909.) [LB476]

PRESIDENT SHEEHY: Senator Kruse, you're recognized to open on AM766. [LB476]

SENATOR KRUSE: Mr. President and colleagues, thank you. I do oppose the amendment that was just withdrawn, and this amendment is quite serious. It is the amendment that would replace the present methods of execution with a firing squad. I have indicated in earlier comment that I prefer a guillotine. Various people get nervous about that because they say it's so messy. Well, hey, we're killing somebody; let's let it be messy. But there's also the problem of hiring a blacksmith to build the machine. I will prefer a firing squad, because we already have the equipment and we know this will be quick, sure, definite, without any additional expense. My problem in this is that the lethal injection...the person supporting it probably would be my wife. When she decides to do away with me and leave my body parts scattered all over the lawn so that it's a heinous crime, it's unlikely that she will be sent to death because she's a little old lady with white hair and we just don't do that. But let's assume that she is sentenced to death. All she has to do is choose the lethal injection, and she's safe. The blood bank has told her not to come back. She has veins that are not accessible for platelets, and they just...after working for 30 minutes, through a great deal of pain on their part and her part, they sent her home and said, please don't come back. So all she has to do is request the lethal

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injection, and she's home free, with quite a bit of pain. But if these professionals can't find a vein, then these who are dealing with lethal injection, who are not professionals, by definition almost--no authorized medical person is going to be willing to participate--they are not going to be able to find it either, so she is saved and we...unless you adopt this amendment to do a firing squad. Now, this is sort of off the subject, and as the Speaker has indicated, and I would concur, when the time comes, I'll give a chance for somebody to talk if they want to, on any subject, but I will withdraw the amendment, because it is distracting to the main subject. I have my light on, and so I will take that opportunity, and turn my light off, to just make one comment. Senator Louden raised the question of, if the system is not working, why not fix it? I thought, bingo, he's raised the right question. This is the fix. This bill is the fix. Let's go back to that 20-year-old young man in my community that is ready to kill or be killed.

Threatening him with a death sentence by execution is not a threat at all. Threatening him with life imprisonment is a threat. The adult in his life can speak to him about, you know, if you kill this person, why, you might end up being executed 20 years from now. That is not impressive. He's expecting he could die tomorrow night. But to say to him, if you commit this crime, you will be going to jail, and when they clang that door on you, it is the end, you will never see daylight again, you are there forever, there will...this is even before the trial. This is the fix that we're looking for, something that is direct, quick. And again, I remind you that in the pioneer days, it was direct and quick. There was a crowd of 5,000 people to witness a hanging in Omaha. The trial was earlier that week. It didn't take long. I guess they must have had computers or something in those days, to spread the word; 5,000 people came. The person on the gallows was asked if he had any final words, and he said he did. He said, I know that you haven't all come here to watch me suffer, you have come here to find out what I have to say, so I will say it. And for 30 minutes, he had his say. Senator Chambers would have loved it. His complaint was about the justice system. The person had been...had died because he was drowned in the Missouri River with a log chained around his ankles. And this fellow at the gallows said, you know, you're taking it out on me that the guy was not a good swimmer. That's his problem, not my problem, that he couldn't swim well enough. It's a different day than that, friends. We must come up with punishment that is immediate, direct, and understandable to the target audience. The death sentence cannot accomplish that, for a variety of reasons. We cannot do the hanging the same week anymore. We cannot do that. What we can do is have a sentence that keeps the person in prison from the moment that he's caught, for the rest of his life. Thank you. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Kruse. You've heard the opening to AM766 to LB476. (Visitors introduced.) The floor is now open for discussion. We have Senator Harms, followed by Senator Fulton, Senator Pedersen, and Senator Schimek, and others. Senator Harms. [LB476]

SENATOR HARMS: Thank you, Mr. President, colleagues. Today I speak with a really heavy heart, and I have to tell you, I'd like to share a couple things that happened in my

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community that bothers me tremendously. Raymond Mata, Jr. was sentenced in 2000 for killing and dismembering Adam Gomez. He mutilated this three-year-old boy in my community. He cooked part of his body and ground it up for dog food, dismembered the child. On February 11, 2002, Jeffrey Hessler, in my community, raped and killed 15-year-old Heather Guerrero, execution style, after raping her, shot her in the head in a basement. Heather was a beautiful child, a beautiful 15-year-old girl. She was athletic, she was popular, she performed anti-drug skits with her friends in school. She was a leader. Both of these men are on death row, where they belong. How do I go home to Scottsbluff and look in the eyes of the Gomez family, the Guerrero family, and see the sadness, and say to them, we've just made this right for you, we've just given the two men who murdered your children, took their life away, took your hope away, by giving them a life sentence? And that's where I struggle, because it's wrong. Either tomorrow or Thursday, we will have an opportunity to do what's right, to make it right. And I say this to you in a heavy heart, because it happened in my community. I saw the fear, I saw the anger, and most of all, I saw the sadness. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Fulton. [LB476]

SENATOR FULTON: Thank you, Mr. President and members of the Legislature. This is...I've told people yesterday when we went to lunch, it's a different atmosphere outside than it is on this floor. As I was walking to lunch yesterday, I was wobbly-kneed, I guess is the best way to say it, because what we're talking about here is quite literally life and death, and it is not lost upon me that the decision that we make or don't make today will have a direct effect on ten individuals that are on death row, because it's unlikely that we're going to debate this again. So I have, as you have, you've thought through this with intensity and with honesty. And I have to say that I'm probably...it's not lost on me, also, my predecessor before me, who I have great respect for, Senator Foley, were he in this seat, he would vote to repeal the death penalty. I have thought through this, and I have listened to the arguments, and the arguments against use of the death penalty are persuasive on me, but they are only able to take me 95 percent of the way. I cannot vote to repeal the death penalty, and I'll explain why. And hopefully, this...I'm trying to do this dispassionately, because that's the way we need to deal with this, with our intellects and wills, as opposed with what we feel in our stomachs, at least what I feel in my stomach right now. I had the chance to reflect on this when a constituent came in and we talked about this at length. I won't repeal the death penalty because, ultimately, out of the argument of self-defense. I have not yet heard an adequate argument to move me from that position. Perhaps there will be adequate arguments to follow, the weight of which would move me off of this principle that I want to share with you, because I think that it...from a position of logic and reason, it is sound, such that we cannot repeal the death penalty. What if we were asked to outlaw the use of deadly force when defending oneself? Would it be right to tell a father, who is charged with protecting his children, that he could never use lethal force, even if a perpetrator is certain to strike at his children? Could we pass a law outlawing deadly force? We could

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not. I think Republican, Democrat, independent, left, right, and everything in between, recognize that it remains a fundamental principle that one is justified in using deadly force when deadly force is required to defend himself or his loved ones. Ultimately, it's this principle which disallows me from voting to repeal the death penalty outright. Now, the argument could be made, and rightfully so, that we have the technological means to incarcerate dangerous criminals for life, such that the death penalty is not pertinent, such that the death penalty shouldn't be used. And that's a persuasive argument. I believe that there are bloodless means by which we can incarcerate dangerous criminals. However, I cannot honestly say that the day won't come when a dangerous individual may require absolute means for society to defend itself. If one has the power and ability to effect destruction from his prison cell, then it can be rightly argued that society must defend itself in an absolute way, and it therefore would be rightly argued that those with the power and ability to exercise these absolute means, us,... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR FULTON: ...have an obligation to do so. It's difficult to embody this person. But in an age of terrorism, in an age where technology advances exponentially, I cannot honestly say that the day won't come when an individual will require society to use absolute means in order to defend itself. An individual, from the cell, who commands the respect of his followers or adherents such that they are willing to kidnap and to murder in order for him to be turned loose, because they are persuaded of his innocence and the rightness of his cause, may require society to utilize absolute means. If the death penalty is repealed and removed, we will not have those means in the future. And so as I put myself in this chair and imagine this time is coming, whether I could push the green button to advance LB476, I cannot honestly do so, because I do not know what the future holds as far as our self-defense and... [LB476]

PRESIDENT SHEEHY: Time, Senator. [LB476]

SENATOR FULTON: ...the obligation we have. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Senator Pedersen. [LB476]

SENATOR PEDERSEN: Thank you, Mr. President, members of the Legislature. First of all, I want to reiterate what I said yesterday, that the climate has changed when it comes to the people of the state of Nebraska, and that has been proven to me and to the Judiciary Committee by who has showed up to testify against Senator Chambers' bill. We did not have one opposition to Senator Chambers' bill this year. I did not get one E-mail today, or one letter, in opposition to Senator Chambers' bill. Yesterday, there were a few for and a few against. We're talking about these people being able to commit this crime again. That's not going to happen, people, with today's modern correctional facilities. Death row in Nebraska was moved from Nebraska State Pen here in Lincoln

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to Tecumseh when it was built. It is a very maximum-security facility, and the part where death row is is even more maximum-security. Senator Flood went with me last year to tour Tecumseh, and one of the places he wanted to see was death row. We went directly to death row. You have to go through a series of six different doors from the time you enter the prison, big, electric, heavy doors, to get to death row. These people live in individual cells, and are not given any amenities except television, and they have a sink, and a toilet, and a cot. Do I think they should be treated any better? No. Do I condone the crime that they committed? No, I do not, in any way, shape, or form. But as my father would have said, when you got fish in a barrel, why do you have to shoot at them? They're not going anywhere, they're not doing anything, they're not hurting anybody. Putting these people to death would be like shooting fish in a barrel, for no reason except for revenge. And we've all been taught that revenge itself is wrong. It is a cancer. It works on the inside, out. I would have no problem with capital punishment if these people had any chance of getting out and recommitting that crime. And I have, again, a serious problem with some of those that have not been given the death penalty and have committed more heinous crimes than some of those we have on death row. I know one man in the correctional institution of the state of Nebraska who raped...he and another man raped a young lady multiple times, and murdered her, when she was baby-sitting, while there was a young... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR PEDERSEN: ...little girl in the room next-door. That man is in our system. He's not a pleasant man. And he's walking the yards. He's not out. He got life imprisonment. Consider them ideas and them thoughts, please. And I'll give the last of my few seconds to Senator Kruse. [LB476]

PRESIDENT SHEEHY: Senator Kruse, about 35 seconds. [LB476]

SENATOR KRUSE: Mr. President, please withdraw this amendment and refile it. [LB476]

PRESIDENT SHEEHY: AM766 is withdrawn. We'll now move to discussion on LB476. Senator Schimek, followed by Senator Burling, Senator Ashford, Senator Aguilar. Senator Schimek. [LB476]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I've been thinking about a number of things today, but I guess what finally prompts me to get up and use some of my own time on this is the fact that I'd like to address some of Senator Fulton's concerns. And I...Senator Fulton, I think that you are mixing apples and oranges here when you talk about taking away the ability to use force when your life is being threatened. That's really taking away a deterrent. It is taking away an ability for you to protect your own being. I can't imagine any circumstances in which the state would ever

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take away that particular right. However, when you try to compare that to the death penalty, that's where I have the problem, because I don't happen to believe that the death penalty is a deterrent. And I want to just reiterate what I said yesterday about, by and large, the states that have death penalties do not have lower rates of crime and murder than do the states that do not have the death penalty. And just one very prime example. I just went back and looked at my chart today. I told you yesterday that Nebraska has 308 crimes per 100,000, in 2004. And this...I've seen other figures since for 2005, and they're very comparable. That same year, Texas had 540 deaths per state...or, violent crimes per 100,000 in their state. That is not quite twice as much as Nebraska has. And yet, and yet, Texas has executed 237 people since, I think it was 1976, although I'd have to go back and look up that. They execute multiple prisoners every year. So I don't think that the death penalty itself is a deterrent. And if you're worried about doing away with the death penalty, if you wonder what would happen to Nebraska if we did away with the death penalty, think about all the countries there are in this world that do not have the death penalty. And I just brought out my little information here that lists those who do not provide for the death penalty, and I count 59 of them. And I'm not going to bore you by reading through that entire list, but there are countries like Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany,...and I'm not going to go through the whole litany, but many of the...most of the civilized nations in this world do not have the death penalty, and most of them have a lower murder rate than we do in the United States. And I just can't help but think violence begets violence, that when the state acts in a violent manner, that it sets a tone. [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR SCHIMEK: I don't think you can sugarcoat the death penalty. That's why I was going to get up opposed to the Kruse amendment, opposed to the Flood amendment. It is taking a human life, and I don't think that the state has any business doing that. We did not give that person life. I don't believe that we have the right to take that life away. What we have the responsibility to do is provide for the safety of our citizens, and we do that by locking up the violent criminals and throwing away the key. And that is the way that we deal with the violence in our society. I thank you very much for your attention. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Schimek. Senator Burling. [LB476]

SENATOR BURLING: Thank you, Mr. President, members of the body. This is my first time to speak on this subject. I thought I should weigh in a little bit. I think that since the beginning of time, you might say, you know, people and societies have struggled to develop rules and regulations and laws that bring some amount of certainty to...security and predictability and safety, and to eliminate chaos in society, so people can move about and function at will. And in the complexity of today's world that we live in, we, in

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this country at least, have categorized crime based on severity, as perceived by the public. So we have felons and we have misdemeanors, and we have I, II, III, IV, and I, II, III, IV, V, and they all have different penalties, supposedly commensurate with the crime. I've heard it said that the state shouldn't be in the business of killing, and I agree. But the law has been on the books for years. And it reminds me of when I was a little boy. My parents talked to me about boundaries, and they described to me what behavior was acceptable and what behavior wasn't, and here's the boundaries, and you step over that line, you might receive a spanking. And so as a boy, I had to test this out, as probably some others in this room can identify with. So I tested it out, and I received a few spankings. But I was warned that that could happen. It was my decision to take that chance. And so I never labeled my parents as beating on me, because they were teaching me about boundaries, and I made the decision to step out of that boundary and receive that spanking. I think that relates to...the state is not really in the business of killing; it's saying, if you take a life, on your own, you might be subject to the death penalty. And almost everyone I talk with believes that the death penalty is the ultimate punishment and is deserving of the most despicable, deplorable, and hideous crime anyone can commit, which is murder. I guess the thing that concerns me most about the possible passage of LB476 is that if we relate punishment with the degree of the crime as we perceive it, based on value, are we saying to the world that in our eyes, the value of an individual human life is not where it used to be? In my lifetime, I've seen global population increase tremendously. And have you ever noticed how the more you have of something, the less value the parts become? And it may not be so in our minds here, but to remove the death penalty from the... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR BURLING: ...laws of the state might send a message to some people that we don't consider life as valuable as we used to; therefore, a reduction in the penalty. We here in the Legislature make mistakes. The judicial system makes mistakes. That will go on forever, because we're human beings. But I believe we should leave the death penalty law on the books. I don't care if it's never used. But I think we should leave it there as a tool for the judicial system to use in the future if they would ever see fit. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Burling. Senator Ashford, followed by Senator Aguilar, Senator Nantkes. Senator Ashford. [LB476]

SENATOR ASHFORD: Thank you, Mr. President, members. And I hopefully will not take all the time, but I wanted to speak very briefly about this bill as it sits now, in my perspective as the Chairman of the Judiciary Committee. The vote that we took on Senator Flood's amendment I think put the bill in exactly the right posture. Essentially, what the body will be voting on is clearly establishing life without parole, no possibility of parole, Parole Board cannot assess...or, grant parole for someone who has committed

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first-degree murder. In the vast majority of cases in this state, that's what we do. And as Senator Lathrop has suggested, I think it's around 7 percent of the cases that actually receive the death penalty. And there can be no question, there can be no question at all that there are more serious or as serious cases where life without parole has been the sentence, and that there are individuals in the state penitentiary who are serving life without parole who have committed offenses as garish, as horrible, as those who are on death row. There is no question about that. And I just would invite you to read the cases. Here's my concern. I came into this body with the same general opinion I had about the death penalty that I had in 1988, and that is, essentially, I don't think it's doing the job, but I'm concerned about getting rid of it. And I think Senator Burling has given us his thoughts on that. And I've heard Senator Harms, who is...and Senator Aguilar, who are two of the most thoughtful individuals I've ever met, and essentially, that's where I think the public is. That's where I think the public is. An event occurs like in Scottsbluff or Grand Island or whatever, and so there can be no worse penalty...or no worse crime than has been committed, and the death penalty is too good for these people. The problem is, in many, many, many, many cases, it is not the punishment. I worry about us defaulting to the suggestion that because we have the death penalty we're soft on crime. I don't think I'm soft on crime. I want to make sure that the sentence...and after hearing the evidence that was presented to the committee--not one person opposed this bill--after hearing the evidence that was presented at this committee, I want to make sure that people are locked up for life for committing these crimes, and that the victims and the families are given the opportunity to know that. To have someone sit on death row for 29 years, as we have...as is the case today, or 20 years, is ridiculous. It's absolutely ridiculous. We are not fulfilling our obligation by doing that. We're not stopping crime. We're not reducing crime. We need to work on things like sexual assault, where in Omaha we had a terrible death of a young girl in North Omaha. But the sexual assault...my brother is a district judge. His name...he will remain nameless. (Laugh) But he called me up and he said, Brad, we've got to have stricter sentences for sexual assault, so those people...that person that committed that crime in north Omaha would be in prison for an awful lot longer time than he was. The arguments given, the emotional arguments, are extremely telling, and they're very important to hear. But the system, folks, isn't working. It's not going to work in the future, and it's going to be tougher in the future as the courts make it tougher. Let's make sure...let's do our job. Let's make sure that people who commit first-degree murder...with the Flood amendment, we've got the bill in its proper place. If there are other amendments that people want to offer, and I...Senator Avery has suggested an amendment that we...the Judiciary Committee would be happy to sit down... [LB476]

PRESIDENT SHEEHY: One minute. [LB476]

SENATOR ASHFORD: ...and look at those amendments. But just for the record, I just want to just end, conclude, from the study that Senator Erdman was reading. In all due respect to Senator Erdman, he didn't have time to complete reading the Baldus study.

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But the actual conclusion of the study is this...this is a Nebraska study: However, the data do not support a conclusion that the system consistently limits death sentencing to the most culpable death-eligible offenders, the group often referred to in popular parlance as the worst of the worst. That is the situation in Nebraska. Let's get going. Let's get into our criminal justice system and make sure that it works, and people are locked up, and these cases are concluded, and we put our resources behind stopping crime and helping victims, where the money should be. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Aguilar. [LB476]

SENATOR AGUILAR: Thank you, Mr. President, members. I'll try to be brief. I know Senator Chambers wants to get to a vote today. But I want to talk a little bit about something that I've heard earlier on the floor. And I was listening very intently to Senator Flood, Senator Harms, and I totally agree with them, that the gentlemen they referred to deserved the sentence they got. There's no question about that. People like Mata, Hessler, Galindo, Sandoval, and Vela deserve just that. But therein lies part of the problem. They're still alive today. They're still using oxygen that some worthwhile person may be able to use. That's bothersome to me, along with the inconsistencies, the inconsistencies created by the human factor. By "the human factor," I mean the prosecutor who determines whether it be charged first-degree, second-degree, or manslaughter; and then there's the judge and the jury. The case of Grand Island that I referred to, our county attorney did his job. He charged that person with first-degree murder. But a Lancaster County attorney reduced it to second-degree. That's bothersome to me. That's why we have a broken system, we need to change it. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Aguilar. Senator Nantkes. [LB476]

SENATOR NANTKES: Mr. President, I move...I call the question. [LB476]

PRESIDENT SHEEHY: The motion for...the question has been called. Do I see five hands demanding the question? I see sufficient numbers. The question has been called. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB476]

CLERK: 29 ayes, 4 nays, Mr. President, to cease debate. [LB476]

PRESIDENT SHEEHY: Debate is ceased. Senator Chambers, you're recognized to close on LB476. [LB476]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm not going to take the full five minutes. I'm going to read a brief portion of an article from the

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Lincoln Journal Star, December 31 of last year. The death penalty is anathema across Europe, and opposition to the execution of Saddam Hussein was nearly unanimous among its leaders Saturday. At the same time, however, many were torn between those strongly held beliefs and the revulsion for the former Iraqi dictator's record of atrocities. Some of the strongest criticism came from the Vatican. The Roman Catholic Church teaches that all human life must be respected, from conception until its natural end. The execution, quote, is tragic news that risks feeding the spirit of revenge, and sowing new violence, unquote, said Pope Benedict XVI's spokesman, Father Frederico Lombardi. Quote, even though this is a person guilty of grave crimes, Lombardi told Vatican Radio on Saturday morning, the execution is a motive for sadness. The killing of a guilty party is not the way to build justice, nor to reconcile society. The Vatican's top official for justice issues, Cardinal Renato Martino, said Saddam was responsible for thousands of deaths, but that executing him amounted to punishing, quote, one crime with another crime. Speaking ahead of the hanging, he said, quote, the death penalty is not a natural death, and no one, not even the state, can kill. Then it goes on to mention other European leaders who condemned the execution while at the same time condemning what Saddam Hussein had done. I don't think there is much that can be said which hasn't been said. But there is additional information that can be made available. And I hope the bill will be advanced, that we will continue the discussion on Select File. If there are additional amendments, they should be considered. When Senator Flood first broached his amendment to me, I had said categorically I would not accept it. I had not looked at it; in the same way some people said they were against the death penalty without having heard the facts. Upon further review, as they say, the amendment doesn't harm the bill at all. It's a good and appropriate amendment. So despite what I was quoted in the paper as having said, when I have additional information brought to me which indicates a position that I took was invalid, I'm not going to hold that position just because I took it. So I supported Senator Flood's amendment. And I hope some of you who may have answered a question put to you by a reporter without having had the facts will consider advancing this bill so that we can consider the discussion. Thank you, Mr. President. [LB476]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You've heard the closing to LB476. Senator Langemeier. [LB476]

SENATOR LANGEMEIER: I'd ask for a call of the house. [LB476]

PRESIDENT SHEEHY: There is a motion to place the house under call. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. [LB476]

CLERK: 49 ayes, 0 nays, Mr. President, to place the house under call. [LB476]

PRESIDENT SHEEHY: The house is placed under call. All unauthorized personnel

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please step from the floor. The house is under call. Senator, how would you like to proceed? [LB476]

SENATOR CHAMBERS: Machine vote. [LB476]

PRESIDENT SHEEHY: The question before the body is, shall LB476 advance to E&R Initial? All those in favor vote yea; opposed, nay. Have all voted who wish? A request for a roll call. Mr. Clerk. [LB476]

CLERK: (Roll call vote taken, Legislative Journal pages 909-910.) 24 ayes, 25 nays, Mr. President, on the advancement of LB476. [LB476]

PRESIDENT SHEEHY: LB476 does not advance. The call is raised. Do you have reports, announcements, or messages at your desk, Mr. Clerk? [LB476]

CLERK: Mr. President, I do. Amendments to be printed: Senator Kruse to LB578. Natural Resources Committee reports LB458 to General File with committee amendments attached. Senator Fischer would like to add her name to LB160 as cointroducer. A series of announcements. The Education Committee will meet in Executive Session in Room 2102 at adjournment; Education, in 2102, upon adjournment. Executive Board will meet upon adjournment in 2022; Executive Board in Room 2022. And the Government Committee will have an Executive Session under the south balcony upon adjournment; Government Committee, upon adjournment, south balcony. (Legislative Journal pages 910-914.) [LB578 LB458 LB160]

Mr. President, a priority motion. Senator Dierks would move to adjourn until Wednesday morning, March 21, at 9:00 a.m. []

PRESIDENT SHEEHY: There is a motion to adjourn until Wednesday, March 21, 2007, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned. []